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FOREIGN SERVICE DESPATCH

DESP. NO.

FROM: USPOLAD, Tokyo

TO: THE DEPARTMENT OF STATE, WASHINGTON.

REF: Deptel 1281, November 28, 1951.

DEPARTMENT OF STATE A/CDC/MR
DATE December 1 1951
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SUBJECT: Proposed Negotiations Concerning a Treaty of Friendship, Commerce and Navigation with Japan.

Upon receipt of the Department's Instruction No. 63 of November 1, 1951, the following Aide Memoire dated November 13, 1951 was transmitted to the Ministry of Foreign Affairs:

"The United States Government shares the desire of the Japanese Government to proceed expeditiously with discussions of a treaty of friendship, commerce and navigation with a view to arriving at a mutually agreed text which may be ready for signature as soon as possible after the formal restoration of peace.

"The fact that the Japanese Government has seen fit to pattern its tentative draft upon the model afforded by treaties of the type which the United States has lately entered into with other countries suggests that there is general agreement on the nature, scope and content of a treaty. This general agreement is of sufficient extent that the outlook for successful negotiations is very hopeful.

"The next step is to determine which draft shall be used as a starting point for negotiations. The Department of State strongly prefers to use its own standard draft as a basis for negotiations. This standard draft has been used in all negotiations to date (except in the special case of Ethiopa). This standard draft has certain distinct advantages: it has been rendered as clear and concise as possible through refinements over the years (based on negotiations with other countries and experience with such treaties in operation); it has proved to be highly successful in negotiations with other countries; and above all, it is a document that the United States Senate has previously approved and with which it is familiar.

"It is understood that acceptance of either draft as a basis for discussions will not prejudice the position of the Japanese Government or of the United States Government as to the final text of the treaty, nor will it prejudice the right of either to seek such modifications and amendments as may be wished during the course of negotiations.

"The Department hopes that, within the reasonably near future, the Japanese Government will be able to assent to use of the Department's standard draft as a basis for negotiations. Once a negotiating draft has been agreed upon, the Department is prepared to give full consideration to the preference of the Japanese Government for either Tokyo or Washington as the site of negotiations.

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"There are enclosed, in addition to three copies of the Department's standard draft, two copies each of the treaties of friendship, commerce and navigation most recently signed by the United States, namely: Greece (August 3, 1951), Israel (August 23, 1951), and Denmark (October 1, 1951), plus the Supplementary Agreement with Italy (September 27, 1951). These treaties, like those with Colombia, Ireland, Uruguay and Italy, were all developed from the Department's standard proposals of the day."

In response, the following Aide Memoire dated November 27, 1951 has been received from the Ministry of Foreign Affairs:

"With regard to the treaty of friendship, commerce and navigation to be concluded between the Governments of Japan and the United States of America, the Japanese Government hopes, in view of the friendly and cordial relations now existing between the two countries, that they will arrive at a mutually agreed text which may be ready for signature as soon as possible after the formal restoration of Peace.

"The Japanese Government submits its observations with respect to the proposed treaty negotiation as follows:

"1. The Japanese Government has no objection to use the proposed U.S. 'Standard-Draft' as a basis and starting point for negotiations. However, it is understood that acceptance of the U.S. Standard-Draft as a basis for discussion will not prejudice the position of the Japanese Government as to the final text of the treaty, nor will it prejudice the right of the Japanese Government to seek such modifications and amendments as may be wished during the course of negotiations.

"2. The Japanese Government prefers Tokyo as the site of negotiations, chiefly because of the fact that detailed provisions for import restrictions and exchange controls, etc., are embodied in a modern type of treaties, which necessitates the maintenance of a close and constant contact with the various Ministries concerned, and also because of the limited staff stationed at the Japanese Overseas Agency in Washington.

"3. The Japanese Government requires a reasonable time to study the proposed 'Standard Draft'. It suggests, therefore, discussions at a preliminary and exploratory stage should be commenced in the beginning of December, 1951.

"4. The Japanese Government intends in a preliminary discussion, to which no other members than those of the Foreign Ministry attend, to clarify the basic idea, interpretation and application of the Standard-Draft article by article, and to express the informal views of the Foreign Ministry, subject to such necessary changes as may be made later.

"When the proposed preliminary discussions have been concluded, the Foreign Ministry will make formal consultations, as occasion may arise, with the other Japanese Government agencies concerned on various questions relating to the treaty, before and during the formal negotiations which are expected to start in the beginning of January 1952.

"5. It is understood that the Japanese officials will negotiate and conclude the above treaty on the basis that the Government of Japan possesses an equal sovereign equality with the Government of the United States."

As indicated in the Mission's telegram No. 1130 of November 28, the Ministry has requested that informal exploratory discussions with the Mission staff shall begin forthwith, and the Mission had indicated that it is willing to begin such discussions. It is anticipated that the Ministry desires such discussions primarily to clarify the meaning of the language employed in the Department's suggested draft, rather than to seek technical interpretations of the provisions of the draft that might be beyond the competence of the Mission's staff to provide.

In reply to the Department's telegram No. 1281 of November 28, the Mission has proposed to the Department in telegram No. 1178 of December 1 that such informal and exploratory discussions be employed also to determine whether more technical discussions are advisable prior to the beginning of formal negotiations. In this case, the Mission assumes that the Department might wish to send a treaty expert to Tokyo and that the timing of formal negotiations would be determined on the basis of the outcome of such technical discussions.

This suggested procedure therefore possibly involves the following sequence: (1) informal, exploratory and largely non-technical discussions between officials of the Ministry of Foreign Affairs and the Mission staff, (2) technical discussions conducted by a treaty expert (assisted by the Mission staff) to define further the principal problems for negotiation, if any, and to confirm further the existence of a community of views of sufficient extent to assure probable ultimate conclusion of an agreed draft, and (3) formal negotiations directed toward agreement on a draft that will be ready for signature shortly after formal restoration of Japanese sovereignty.

For the Political Adviser:

Peyton Kerr

Peyton Kerr
First Secretary of Mission